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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

CITY OF OAKLAND,

Plaintiff,

v.

THE OAKLAND RAIDERS, A CALIFORNIA LIMITED PARTNERSHIP; ARIZONA CARDINALS FOOTBALL CLUB LLC; ATLANTA FALCONS FOOTBALL CLUB, LLC; BALTIMORE RAVENS LIMITED PARTNERSHIP; BUFFALO BILLS, LLC; PANTHERS FOOTBALL, LLC; THE CHICAGO BEARS FOOTBALL CLUB, INC.; CINCINNATI BENGALS, INC.; CLEVELAND BROWNS FOOTBALL

CASE NO. 3:18-cv-07444-JCS

PLAINTIFF CITY OF OAKLAND'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Date: June 7, 2019
Time: 9:30 a.m.
Place: Courtroom G, 15th Floor

Assigned to the Honorable Joseph C. Spero

COMPANY LLC; DALLAS COWBOYS FOOTBALL CLUB, LTD.; PDB SPORTS, LTD.; THE DETROIT LIONS, INC.; GREEN BAY PACKERS, INC.; HOUSTON NFL HOLDINGS, LP; INDIANAPOLIS COLTS, INC.; JACKSONVILLE JAGUARS, LLC; KANSAS CITY CHIEFS FOOTBALL CLUB, INC.; CHARGERS FOOTBALL COMPANY, LLC; THE RAMS FOOTBALL COMPANY, LLC; MIAMI DOLPHINS, LTD.; MINNESOTA VIKINGS FOOTBALL, LLC; NEW ENGLAND PATRIOTS LLC; NEW ORLEANS LOUISIANA SAINTS, LLC; NEW YORK FOOTBALL GIANTS, INC.; NEW YORK JETS LLC; PHILADELPHIA EAGLES, LLC; PITTSBURGH STEELERS LLC; FORTY NINERS FOOTBALL COMPANY LLC; FOOTBALL NORTHWEST LLC; BUCCANEERS TEAM LLC; TENNESSEE FOOTBALL, INC; PRO-FOOTBALL, INC.; and THE NATIONAL FOOTBALL LEAGUE,

Defendants.

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I. INTRODUCTION

Defendants' Motion to Dismiss (Dkt. 41) must fail as it is based almost entirely on factual analysis and issues to be decided by a trier of fact, rather than the sufficiency of the allegations contained in Plaintiff's Complaint (Dkt. 1). Plaintiff has alleged a conspiracy among Defendants to boycott the City of Oakland and approve the Raiders' move to Las Vegas in complete contravention and breach of the Relocation Policies. When taken as true, as is required at the pleading stage, Plaintiff's detailed allegations sufficiently set forth each of its claims.

As fully set forth in Plaintiff's well-pled Complaint, Defendants failed to make even the most basic effort to comply with their own Constitution and Bylaws (Compl., Ex. 1) and Relocation Policies (Compl., Ex. 2) in voting to relocate the Raiders. In fact, Defendants admit this failure in their opening statement: "The Raiders *want* to move to Las Vegas. Las Vegas *wants* to host the Raiders." (Def. Mem. at 2 (emphasis added)). This is exactly what the Relocation Policies seek to prevent – a Host City (such as Plaintiff) being shut out of the Host Cities market simply because billionaire NFL Club owners decide they want a change of scenery. Defendants cite the exact language of the Relocation Policies that forms the basis of this lawsuit in their own brief: "*Because League policy favors stable team-community relations*, clubs are obligated to work diligently and in good faith to obtain and to maintain suitable stadium facilities in their home territories, *and to operate in a manner that maximizes fan support in their current home community*." (Def. Mem. at 20 (emphasis original)). Among other things, Plaintiff's allegations establish antitrust injury and Plaintiff's status as an intended third party beneficiary of a valid, enforceable contract.

First, Plaintiff adequately alleges both the existence of and harm flowing from Defendants' collusion. Defendants' Motion attempts to shift the focus from the alleged anticompetitive conduct to arguments that mischaracterize the law and facts, or are premature at the pleading stage. Defendants' arguments regarding Plaintiff's antitrust claims all fall short. Defendants argue:

- *There is no antitrust injury because competition increased rather than decreased*, but in reality, competition was artificially constrained by the 32-team cap;
- *Oakland's injuries are indirect*; however, Oakland is an owner of the Coliseum and the damages it suffered and will suffer as an owner and Host City are direct and tangible;
- *The alleged relevant market is nonsensical*, but in actuality, it is well-defined, and recognized by the Ninth Circuit Court of Appeals; and

- *There has been no group boycott nor price fixing and thus no per se violation*, which, as alleged, there was.

Second, Plaintiff has adequately alleged a claim for breach of contract and sufficiently established its status as a contemplated and actual third party beneficiary. Defendants' assertion that no contract exists is baseless. Defendants argue:

- *The Relocation Policies are not a contract but rather guidelines by which the NFL can exercise their discretion and business judgment*, but this is simply false as the terms are enforceable and consequences result from non-compliance;
- *Oakland is not an intended beneficiary of the Policies*, however, the Policies are expressly for the benefit of Host Cities, which include Plaintiff; and
- *There is no breach*, although there clearly was, as Defendants did not negotiate in good faith as required and the considerations required by the Policies indicated that the relocation of the Raiders should not have been approved.

Of course, the application of the terms of the contract, the circumstances of the breach, and the damages suffered are all questions of fact for the trier of fact to consider.

Finally, Plaintiff's claims for quantum meruit and unjust enrichment are each pled with sufficiency and survive independently and in conjunction with the other claims.

This lawsuit is not the first of its kind – many of the claims alleged have been litigated in the past as a result of the Raiders' prior departures from Oakland, as well as currently in Missouri state court as a result of the Rams' move to Los Angeles. Nonetheless, Defendants have continued their unlawful, cartel-like control of the market for hosting NFL Clubs, extracting supra-competitive pricing and cartel payments to each other totaling billions of dollars. For the reasons set forth herein, Defendants' Motion to Dismiss should be denied.

II. SUMMARY OF ALLEGATIONS

Oakland, as an owner of the Coliseum and the boycotted Host City of the Raiders, commenced this action by filing the Complaint on December 11, 2018. (Dkt. 1). The Complaint sets forth detailed allegations demonstrating a collusive scheme by Defendants to boycott Oakland from hosting an NFL team. This boycott arose out of Defendants' collective decision (in the form of an owners' vote) to relocate the Raiders from Oakland to Las Vegas, in violation of Defendants' own Relocation Policies as well as federal antitrust laws. (Compl. ¶¶ 1-16, 23-87).

Specifically, in March 2017, the NFL approved the Raiders' move from Oakland to Las

Vegas, despite Oakland's significant efforts to keep its team. (Compl. ¶¶ 58-79). In 1985, the NFL adopted the Relocation Policies in response to an antitrust ruling against it by the Ninth Circuit. The Relocation Policies were intended to prevent future anticompetitive decisions and are binding on Defendants as an addendum to the NFL Constitution. (Compl. ¶¶ 30-35). Thus, the Relocation Policies applied to and should have controlled Defendants' decision-making concerning the Raiders' proposed relocation. Those Policies make it clear that "each [NFL] club's primary obligation . . . is to advance the interest of the League *in its home territory*." (Compl. ¶ 33 (emphasis added)).

Given that the "Raider Nation" was one of the most loyal, passionate, and long-established fan bases in the NFL; that Oakland proffered multiple viable stadium plans; and Defendants' admission in its Motion papers that the Raiders' move was simply for enhanced revenues, it is clear that Defendants, at best, ignored their own Relocation Policies or, at worst, violated them willingly. (Compl. ¶¶ 58-87). Indeed, Defendants planned to relocate the Raiders to Las Vegas long before they began disingenuous negotiations with Oakland to build a new stadium. (Compl. ¶¶ 58-68).

Oakland went through extraordinary efforts to keep the Raiders from relocating, including offering multiple viable plans to renovate the existing Oakland-Alameda County Coliseum. (Compl. ¶¶ 58-79). Defendants did not seriously consider these offers, rejecting the last the same day it was made, because, among other things, the offers would not earn Defendants the exorbitant, arbitrary $378 million Relocation Fee they were able to collect from the Raiders' move. (*Id.*). In a competitive market, Oakland could reject Defendants' supra-competitive prices and seek a new team willing to play in the existing, upgraded or proposed new stadium, but the market for Host Cities for NFL teams is not competitive: it is intentionally constrained to 32 teams and its incentives are skewed by the Relocation Fee. (Compl. ¶¶ 1-16, 23-87). The primacy of the Relocation Fee is demonstrated by the fact that the fee for the Raiders' relocation was determined *before the actual relocation vote took place*. (Compl. ¶¶ 69, 73-76).

The Relocation Policies are a valid, binding contract enforced by the NFL against the 32 NFL Clubs for the express benefit of Host Cities, such as Oakland. (Compl. ¶¶ 140, 142). Oakland, as an intended beneficiary, reasonably relied on the Policies in making significant investments in the Raiders, such as maintaining and upgrading the Coliseum. (Compl. ¶ 144). As a direct result of

Defendants' breach, Plaintiff has suffered and will suffer significant damages. (Compl. ¶ 146).

III. LEGAL ARGUMENT

A. STANDARD ON A MOTION TO DISMISS

"The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint." *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "Generally, a plaintiff's burden at the pleading stage is relatively light." *Albert v. Postmates Inc.*, No. 18-cv-07592-JCS, 2019 WL 1045785, at *3 (N.D. Cal. Mar. 5, 2019) (Spero, J.). To survive such a motion, a plaintiff need only allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007); *see also* Fed. R. Civ. P. 8(a). Under this "facial plausibility" standard, a plaintiff must allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When deciding whether a plaintiff has stated a claim upon which relief can be granted, the court must assume that the plaintiff's allegations are true and must draw all reasonable inferences in the plaintiff's favor. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011); *see also Albert*, 2019 WL 1045785, at *3 (In ruling on a motion to dismiss under Rule 12(b)(6), the court analyzes the complaint and takes "all allegations of material fact as true and construe[s] them in the light most favorable to the non-moving party.") (citing *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995)).[1]

B. PLAINTIFF HAS SUFFICIENTLY ALLEGED CLAIMS UNDER THE ANTITRUST LAWS

1. Plaintiff Has Adequately Pled Antitrust Injury

Defendants' first argument is that Oakland has not alleged an "antitrust injury," and they cite *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League* ("*Raiders II*"), 791 F.2d 1356, 1364 (9th Cir. 1986), for the proposition that such injury requires "a showing that the injury was caused

[1] In instances where a court dismisses the Complaint, the Ninth Circuit has "repeatedly held that a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and quotation marks omitted).

by a reduction, rather than increase, in competition flowing from the defendant's acts." Defendants then characterize the events described in the Complaint as a friendly bidding contest for the Raiders that had no impact on competition: since 32 NFL Clubs existed prior to the Raiders' decision to relocate, and 32 NFL Clubs existed after, the relocation had no anticompetitive effect. As Defendants put it: "The Raiders want to move to Las Vegas. Las Vegas wants to host the Raiders." (Def. Mem. at 2).

Of course, the number of NFL Clubs was the same before and after Defendants' anti-competitive relocation decision at issue in *Raiders II*, and the Ninth Circuit still affirmed a finding that Defendants had violated the antitrust laws in two markets: one for professional football teams and another for stadium hosts of those teams. *See Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League* ("*Raiders I*"), 726 F.2d 1381, 1393-1394 (9th Cir. 1984). Here, Oakland alleges that Defendants have once again inflicted an anticompetitive injury on this second market, and the fact that the number of teams stayed the same is not, as Defendants state, evidence that there was no anticompetitive effect, but in fact, evidence of the opposite: no matter the demand, the number of teams cannot change, because *Defendants' product market is intentionally constrained to 32 teams*, so Defendants can extract excess profits from Host Cities. (Compl. ¶¶ 8, 23-29, 80-87).

Indeed, although 32 NFL Clubs existed before and after the Raiders' decision to relocate, *the relocation process demonstrates that in a competitive market, there would now be 33 clubs*, with one in Oakland and one in Las Vegas (and probably 35 clubs, with clubs also in St. Louis and San Diego). All these cities wanted and could support NFL clubs. The fact that some must go without is due not to market forces but rather artificial constraint. The NFL's constraint on the number of NFL clubs is the very reason its boycotts of Host Cities – Los Angeles in *Raiders II*, Oakland here, and San Diego and St. Louis in recent years – inflicts such devastating injuries on those cities. (Compl. ¶¶ 80-87). Defendants cannot deny that they intentionally constrain the market to 32 Clubs; that number is required by their own Constitution. (Compl. Ex. 1, Article III 3.1(A)). This concerted effort to exclude willing market participants, thereby decreasing competition, is a hallmark of anticompetitive behavior. *See Coalition for ICANN Transparency, Inc. v. VeriSign, Inc.*, 567 F.3d 1084, 1090 (9th Cir. 2009) ("We have expressly held . . . that concerted action

between co-conspirators to eliminate competitive bidding for a contract is an actionable harm to competition"); *O'Bannon v. Nat'l Coll. Athletic Ass'n*, No. 09-cv-1967-CW, 2010 WL 445190, at *5 (N.D. Cal. Feb. 8, 2010) ("O'Bannon has also sufficiently plead [sic] significant anticompetitive effects. O'Bannon pleads that he and putative class members are excluded from the market by Defendants' actions").

As Judge Easterbrook of the Seventh Circuit Court of Appeals observed in an antitrust case involving a trade association:

> Antitrust law is about consumers' welfare and the efficient organization of production. It condemns reductions in output that drive up prices as consumers bid for the remaining supply. . . . In a market with thousands of providers – that is, in the market for ophthalmological services – what any one producer does cannot curtail output; someone else will step in. . . . Other trade association cases . . . involved enforcement devices. Perhaps members boycotted those who fell out of step [], or perhaps the producers agreed "not to manufacture, distribute, or purchase certain types of products[.]" These enforcement mechanisms are the "restraints" of trade. Without them there is only uncoordinated individual action, the essence of competition.

Schachar v. Amer. Acad. Of Ophthalmology, Inc., 870 F.2d 397, 399 (7th Cir. 1989) (internal citations omitted). Defendants did not simply pick Las Vegas over Oakland with respect to the Raiders; they "coordinated" and imposed an "enforcement mechanism" on Oakland, as a Host City. (Compl. ¶ 100). Specifically, teams are constrained to an artificially low number of 32, and if a Host City is unwilling to pay Defendants' supra-competitive prices – *i.e.*, if the Host City "falls out of step" – it is boycotted from hosting any of this limited supply of teams. (Compl. ¶¶ 16, 69-87). Defendants' bad faith in imposing this enforcement mechanism is amply demonstrated by their blatant disregard for their own Relocation Policies, which were adopted to prevent anticompetitive behavior.[2] (Compl. ¶¶ 78-79). Further, the Relocation Fee – an enormous incentive for the NFL Clubs to violate their own policies – makes a mockery of any claim that Oakland and Las Vegas

[2] The Relocation Policies are meant to prevent a boycott situation by ensuring that only if a Host City is not being sufficiently supportive of an NFL Club – and thus can reasonably be characterized as no longer a willing participant in the Host City marketplace – may a relocation be approved. Here, as in St. Louis and San Diego, those Policies were ignored.

were engaged in a truly competitive process.[3]

The Ninth Circuit Court of Appeals has defined five elements of "antitrust injury": "(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, . . . (4) that is of the type the antitrust laws were intended to prevent," and (5) that "the injured party be a participant in the same market as the alleged malefactors" (quotations and citations omitted)." *Glen Holly Entm't Inc. v. Tektronix Inc.*, 352 F.3d 367, 372 (9th Cir. 2003). As to the last of these elements, "the party alleging the injury must be either a consumer of the alleged violator's goods or services or a competitor of the alleged violator in the restrained market." *Id.* Here, Plaintiff has alleged in detail how Defendants used their cartel-like control of professional football teams to constrain the supply of those teams, force participants in the market of cities for those teams to pay supra-competitive prices for stadia, and boycott those cities which fail to do so. (Compl. ¶¶ 8, 23-29, 80-87).

As the Ninth Circuit held in analyzing the NFL:

> Collective [NFL] action in areas such as League divisions, scheduling and rules must be allowed, as should other activity that aids in producing the most marketable product attainable. Nevertheless, legitimate collective action should not be construed to allow the owners to extract excess profits. In such a situation the owners would be acting as a classic cartel. Agreements among competitors, *i.e.*, cartels, to fix prices or divide market territories are presumed illegal under § 1 because they give competitors the ability to charge unreasonable and arbitrary prices instead of setting prices by virtue of free market forces.

Raiders I, 726 F.2d at 1392. Oakland alleges Defendants – ignoring their own Relocation Policies and constraining the market for NFL Clubs – boycotted Oakland as a Host City and, in doing so, acted as a "classic cartel" to "extract excess profits." (Compl. ¶¶ 1-17, 23-29, 69-87, 98-129).

2. Plaintiff Has Adequately Alleged Antitrust Standing

Defendants next make a variety of arguments decrying Oakland's supposed lack of "antitrust

[3] Defendants cite *Sterling v. NBA*, No. 14-cv-4192-FMO, 2016 WL 1204471 (C.D. Cal. Mar. 22, 2016), although that case is inapposite. In *Sterling*, the former owner of the Clippers sued for being permanently barred by the NBA from team ownership. The market at issue was NBA teams, not Host Cities, and the court found that the plaintiff had failed to show that the NBA's decision to bar him had any anti-competitive effect on the market for NBA teams. *Id.* at *2-3, 5-6. Here, the Host City market is at issue and, as alleged in the Complaint, the rules at issue, the Relocation Policies, supported keeping Oakland as a Host City (and, therefore, denying the Raiders' relocation bid).

standing." These are based on Defendants' erroneous assumption that the Oakland-Alameda County Coliseum Authority ("Authority"), rather than the City of Oakland, is the owner of the Oakland Alameda County Coliseum (the "Coliseum"). The Authority does not own the Coliseum. The Coliseum is jointly owned by the City of Oakland and Alameda County and is leased to the Oakland-Alameda County Coliseum Financing Corporation, which, in turn, has assigned its rights under that lease to the Authority. In fact, the Authority exists only to finance improvements to the Oakland Alameda County Coliseum Complex, and to manage the Coliseum Complex on behalf of the City and the County. Oakland is a very real owner of the Coliseum, and thus has standing to sue.[4] (Compl. ¶ 96 ("…Plaintiff now owns a stadium that has been boycotted by the NFL…").

Nonetheless, relying again on *Raiders II*, Defendants contend that Oakland has not pleaded facts demonstrating that it has standing under the *Associated General* considerations cited in that decision. (Def. Mem. at 9) Those considerations[5] include: "(1) the motive of the Defendant – whether it specifically intended to cause plaintiff's harm; (2) the nature of plaintiff's injury – whether it was of a type the antitrust laws were designed to prevent; (3) the directness of the causal connection between the violation and the injury; (4) the extent to which abstract speculation underlies the allegations of injury and of their causation by Defendant's antitrust violations; and (5) the risk of duplicate recoveries or complex apportionment of damages if plaintiffs such as this are permitted to recover." *Raiders II*, 791 F.2d at 1363 (citing *Associated Gen. Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 537-45 (1983)).

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[4] Neither of Defendants' citations – to the decision in *Oakland Raiders v. Oakland-Alameda Cty. Coliseum*, 144 Cal. App. 4th 1175, 1179-1180 (App. Ct. 2006) or to a 1996 Authority resolution – support their assumption that the Authority owns the Coliseum. In fact, in a footnote, Defendants seem to concede that Oakland owns the Coliseum, but argue that it lacks standing because it is a "landlord." (Def. Mem. at 11, fn.7). Defendants' cases, however, involve no general prohibition of "landlord" actions, but rather support a fulsome analysis of a plaintiff's claimed antitrust injuries (*R.C. Dick Geotermal Corp. v. Thermogenics*, 890 F.2d 139, 146-48 (9th Cir. 1989); *Innovation Marine Protein, LLC v. Pac Seafood Grp.*, No. 17-cv-00815-MC, 2018 WL 1461501, at *5-8 (D. Or. Mar. 23, 2018)), and a determination that plaintiffs were not participants in the relevant markets. A fulsome analysis here shows that Plaintiff is an owner and participates in the relevant market.

[5] "To conclude that there is antitrust standing, a court need not find in favor of the plaintiff on each factor. . . . Generally [n]o single factor is decisive. . . . Nevertheless, we give great weight to the nature of the plaintiff's alleged injury." *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of California*, 190 F.3d 1051, 1055 (9th Cir. 1999).

The Complaint specifically alleges that:

- Defendants intentionally acted to harm Oakland through, among other anticompetitive conduct, a group boycott (*see* Compl. ¶ 102: "Defendants' group boycott constitutes an unreasonable restraint of trade . . . . the clear objective of Defendants' misconduct is to freeze the number of competitive professional football teams and to increase Defendants' profits, voting in favor of relocations in direct opposition to the Relocation Policy in order to collect exorbitant relocation fees, and monopolistic rents paid by wealthier Host Cities");
- Oakland's injuries, those resulting directly from this boycott, are exactly what the antitrust laws are meant to prevent (*see* Compl. ¶¶ 95-96: "Such collusive conduct has been enormously injurious to Plaintiff and its citizens. Among other damages, Plaintiff has invested and borrowed significant sums of money, totaling over $240 million, in reliance on the Relocation Policies and the presence of the Raiders in Oakland and at the Coliseum. Further, Plaintiff will soon lose the significant tax and other income that it derives from the presence of the Raiders and the economic activity their presence generates. In addition, Plaintiff now owns a stadium that has been boycotted by the NFL and, thus, has incurred the significant diminution in property value caused by that boycott"); and, accordingly,
- A direct causal connection exists (*see id.*);
- There is no abstract speculation (*see id.*); and
- There is no risk of duplicate recoveries (as the City of Oakland, as a market participant in this case, is the victim of this antitrust injury). (Compl. ¶¶ 1-16, 69-87, 98-137). Further, any argument that a recovery by Plaintiff would be duplicative of the potential recovery by the County of Alameda and/or the Authority is unfounded, as those entities have not sued, the damages suffered by each are distinct, and Plaintiff is only seeking damages associated with its specific interests.

O'Bannon, 2010 WL 445190, at *7 ("Defendants' actions have allegedly prevented O'Bannon and other student athletes from participating in the collegiate licensing market. In doing so, Defendants have decreased competition in the market. Antitrust law is intended to prevent such harm.").

Defendants also argue (ostensibly as a standing issue) that Oakland's alleged damages are too "indirect" to withstand a Rule 12(b)(6) motion. This is in reality a proximate cause issue, which is for the trier of fact. *See, e.g., Orr v. S. Pac. Co.*, 226 F.2d 841, 843 (9th Cir. 1955) ("[A] finding of proximate cause is one peculiarly within the province of the jury or other trier of fact"); *see also Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 1001 (9th Cir. 2008) ("[A]ntitrust injury and proximate cause are closely related concepts").

Further, Defendants' arguments are baseless. Oakland has alleged that the unlawful relocation of the Raiders has left it with significant sums that were "invested and borrowed" in reliance on the Raiders' presence; these sunk investment costs are recoverable damages in actions for group boycotts. *See Carpa, Inc. v. Ward Foods, Inc.*, 536 F.2d 39, 51 (5th Cir. 1976); *Jerrold Elecs. Corp. v. Wescoast Broad. Co.*, 341 F.2d 653, 665 (9th Cir. 1965); H. Hovenhamp, Federal

Antitrust Policy: The Law of Competition and its Practices, at § 17.6, p. 626 (West 1994); ABA Model Jury Instructions In Civil Antitrust Cases (2016 ed.), Ch. 6, B.1 (Antitrust law "provides that [a] plaintiff should be fairly compensated for all damages to its business or property that were a direct result or likely consequence of the conduct" that a jury has "found to be unlawful"). Oakland has also alleged losses from the depreciated value of the boycotted Coliseum, and lost revenues. (Compl. ¶¶ 15, 95-97). Both of these were categories of damages in *Raiders II*, where the Ninth Circuit upheld the entirety of the jury's damage award. 791 F.2d at 1365-1366; *see also* Second Amended and Supplemental Complaint for Injunctive Relief and Damages under the Anti-Trust Laws, *Raiders II*, No. 78-cv-3523 (C.D. Cal. May 20, 1980), ¶¶ 25-28.

Although Defendants contend that Oakland cannot commence this action as a "sovereign," their only authority, *Hawaii v. Standard Oil Co.*, 405 U.S. 251 (1972), is of no support. *Hawaii* involved an action by the State of Hawaii *parens patriae* on behalf of all of its citizens for injuries to its "general economy;" in response, the U.S. Supreme Court ruled that the antitrust laws – which protect "commercial interests" – did not extend to such actions. Here, Oakland is not suing on behalf of its citizens for damages to its general economy on the basis of its "sovereign activity," but rather on its own behalf, for losses incurred from Oakland's very real interest in the Coliseum and as a boycotted Host City. These specific losses include tax revenues and other income derived from economic activity generated by the presence of the Raiders, as well as Oakland's lost investments in the team and monies expended in efforts to keep the Raiders. Indeed, Defendants are decidedly disingenuous in contending that Oakland somehow had no interest in the commercial transactions involving the Raiders when, in fact, Oakland was the principal party negotiating with the Raiders and NFL in what ultimately was a futile effort to keep the Raiders in Oakland. (Compl. ¶¶ 58-79).

Defendants also rely on *Hawaii* in contending that lost tax revenues are not recoverable by a "sovereignty," although *Hawaii* says nothing of the sort, a fact that U.S. Supreme Court Justice Ginsburg recognized.[6] As Defendants well know, Host Cities rely heavily on anticipated tax

[6] In *Hemi Group, LLC v. City of New York, LLC*, 559 U.S. 1 (2009), Justice Ginsburg discussed the petitioner's citation to *Hawaii* and dismissed any relationship between it and tax revenues: "[*Hawaii v. Standard Oil*] involved not a loss of tax revenues, but 'injury to the general economy of (footnote continued)

revenues in making decisions to invest in professional sports clubs. What then limits a city's ability to seek recovery for those tax losses when it is the subject of an unlawful boycott? The answer is nothing, except the basic principles governing proximate cause. *See, e.g., Lexmark Int'l, Inc. v. Static Control Comps., Inc.*, 572 U.S. 118, 132 (2014) (stating "we generally presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute" and citing the Clayton Act as an example); *City of Oakland v. Wells Fargo Bank, N.A.*, No. 15-cv-04321-EMC, 2018 WL 3008538, at *10 (N.D. Cal. June 15, 2018) (denying motion to dismiss Oakland's FHA claims seeking to recover lost "tax revenues").

In *Raiders II*, the Ninth Circuit squarely addressed the issue Defendants raise here – the injury to a Host City from Defendants' anticompetitive conduct – and found a direct link between anticompetitive relocation decisions and the deprived host injured by that decision:

> [In *Raiders I*], we found sufficient evidentiary support for the jury's finding that the NFL's territorial restraints in this case not only impaired competition between NFL football team franchises, but also restrained competition in the "stadia market" between rival stadia (such as the Oakland Coliseum and the L.A. Coliseum) that seek to secure NFL tenants.
>
> Clearly, the [L.A.] Coliseum suffered direct harm as the result of the NFL's antitrust restraints in that latter market. . . . The [L.A.] Coliseum was a competitor in a market in which competition was restrained directly and foreseeably, if not also intentionally. This stadium, which previously had sought to acquire the Minnesota Vikings team as a tenant, was engaged in a bidding struggle with its Oakland counterpart for the tenancy of the Raiders, and was injured when the NFL's application of its territorial restrictions foreclosed further undistorted negotiations.

791 F.2d at 1365. The same reasoning applies here.

Defendants also argue that Oakland has no standing because it somehow is not in the same market as Defendants, as Oakland "does not own a professional football club." (Def. Mem. at 12). This argument is nonsensical. Oakland, as a Host City, is in the market for hosting NFL Clubs; Oakland is the willing buyer/consumer in this market, and Defendants are the unwilling sellers/producers in this same market. In both *Raiders I* and *Raiders II*, the Ninth Circuit recognized a market of rival "stadia" for NFL Clubs; since a new stadium was contemplated for the Raiders by

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a State' – insofar as it was threatened by violations of antitrust law . . . . Hawaii's interest, both more general and derivative of harm to individual businesses, differs significantly from the particular tax loss . . . directly at issue here." 559 U.S. at 31.

Oakland and Las Vegas, the Complaint merely tweaks this market to define it around "Host Cities" with proposed stadia, instead of existing stadia.

Lastly, Defendants simply ignore the standards which apply to their Motion when they argue that Oakland has not sufficiently pled that it took "substantial demonstrable steps" to acquire (here, keep) an NFL team. (Def. Mem. at 12). The Complaint contains numerous allegations about the lengths to which Oakland went to keep the Raiders in Oakland. (Compl. ¶¶ 58-79).

3. Plaintiff Has Adequately Alleged A Market Under The Sherman Act

Regarding the relevant market, Defendants confusingly and inaptly claim that Oakland is not a "buyer or seller," NFL Clubs are not a "product" to Host Cities and stadia, Oakland does not own a NFL Club, and Oakland (as a Host City) is not "bought and sold." (Def. Mem. at 11-13).[7]

As noted above, Defendants essentially concede the existence of the relevant market when referring to what they claim was a heated competition between Las Vegas and Oakland for the Raiders—the very market Oakland has pleaded in the Complaint. (Def. Mem. at 2, 5-6). Of course, there must be a market for Host Cities, as alleged. Otherwise, there would be no need or reason for a NFL Club to pay a Relocation Fee – it is either an indication of the value of moving (which is related to the value of the Host City in the relevant market), or it is arbitrary.

Moreover, the NFL has previously agreed that there is a market for cities hosting stadium activities. In *Raiders I*, the NFL recognized such a market, arguing only that the market should not be limited to just professional football:

> The L.A. Coliseum claims the relevant market is stadia offering their facilities to NFL teams (the product market) in the United States (the geographic market). The NFL agrees with this geographic market, but argues the product market involves cities competing for all forms of stadium entertainment, including NFL football teams.

[7] All of this misdirection is beside the point as Plaintiff has alleged *per se* violations that do not require a defined market. However, if the Court finds that rule of reason does apply here, Plaintiff has adequately pled relevant market. "[U]nder the rule of reason . . . the factfinder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition . . . [P]laintiffs can [also] allege that a restraint is illegal *per se* because it is so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality." *Solyndra Residual Tr. v. Suntech Power Holdings Co., Ltd.*, 62 F. Supp. 3d 1027, 1039 (N.D. Cal. 2014). "When a *per se* violation such as horizontal price fixing has occurred, there is no need to define a relevant market or to show that the defendants had power within the market." *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 986 (9th Cir. 2000).

726 F.2d at 1393.

Of course, the NFL lost its "all forms of stadium entertainment" argument before the jury (*id.* at 1394), and *Raiders I* makes clear that the issue of whether professional football is, in and of itself, a stadia product market or sub-market is a jury question. *See id.* ("That NFL football has limited substitutes from a consumer standpoint is seen from evidence that the Oakland Coliseum sold out for 10 consecutive years despite having some of the highest ticket prices in the League"); *see also Raiders II*, 791 F.2d at 1363 ("[In *Raiders I*], we found sufficient evidentiary support for the jury's finding that the NFL's territorial restraints . . . restrained competition in the 'stadia market' between rival stadia (such as the Oakland Coliseum and the L.A. Coliseum) that seek to secure NFL tenants"). In fact, by describing the Raiders' move as nothing more than a friendly competition between Oakland and Las Vegas (Def. Mem. at 2), Defendants have not only conceded the existence of a Host City market but also recognized that it could be a truly competitive marketplace absent their collusion.

Nonetheless, Defendants complain that Oakland's definition of the relevant market fails to incorporate "reasonably interchangeab[le]" products or services. (Def. Mem. at 13-14). There is a reason for that: Oakland – like the plaintiffs in *Raiders I* and *Raiders II* – asserts that there are no reasonable "substitutes" or "interchangeable" products when it comes to NFL football. However, contrary to Defendants' assertion, whether a product is a substitute for, or reasonably interchangeable with, another product is determined by consumer choice, a very real factual issue.[8] *See Dang v. San Francisco Forty Niners*, 964 F. Supp. 2d 1097, 1104 (N.D. Cal. 2013) ("[N]o more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade or commerce [constituting a 'relevant market']") (quotation omitted). Accordingly, although "facially unsustainable" market definitions can be dismissed at the motion to dismiss juncture, "[t]he determination of the relevant market is an issue

[8] Defendants cite *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1045 (9th Cir. 2008) as ruling that "consumers do not define the boundaries of the market". In fact, the Ninth Circuit held the opposite: "We agree with Newcal. Under *Eastman Kodak*, Newcal's market definition [around a group of consumers] does not fail as a matter of law, at least on a Rule 12(b)(6) motion." *Id.* at 1046.

for the trier of fact." *FTC v. Lundbeck*, 650 F.3d 1236, 1239 (8th Cir. 2011).[9]

Here, Oakland's market definition is more than "facially sustainable." Like the plaintiffs in *Raiders I* and *Raiders II*, Oakland sets forth significant allegations about the uniqueness of professional football, and the lengths to which Host Cities go to attract NFL Clubs to their cities. Oakland then defines a market that tracks the accepted market definition in *Raiders I* and *Raiders II*, with a refinement that was not at issue in those two cases (*i.e.*, the contemplation of new stadia).

4. Plaintiff Has Adequately Alleged A Group Boycott And Refusal To Deal

Defendants contend that Oakland has failed to allege a group boycott or refusal to deal (Counts I and II) because "[a]n agreement, some concerted effort, is required before a group boycott exists." (Def. Mem. at 15 (quoting *Supermarket of Homes, Inc. v. San Fernando Valley Bd. of Realtors*, 786 F.2d 1400, 1405 (9th Cir. 1986))). Of course, the Complaint contains numerous allegations about Defendants' concerted effort to boycott Oakland. (Compl. ¶¶ 1-16, 23-29, 69-87, 98-118). Defendants collectively voted to approve the relocation of the Raiders to Las Vegas and, along the way, ignored their own Relocation Policies, collected a handsome Relocation Fee, and took public shots at Oakland and its efforts to persuade the Raiders to stay. (Compl. ¶¶ 58-87). Defendants have not offered Oakland another NFL team, and no NFL Club has even suggested that it is willing to move to Oakland. Why? Because Oakland has demonstrated an unwillingness to pay Defendants' supra-competitive prices. Defendants as a group are acting as a cartel, not as "one boycotter", to exclude other competitors from the market. (Def. Mem. at 15). *See Raiders I*, 726 F.2d at 1392 ("[L]egitimate collective action should not be construed to allow the owners to extract excess profits. In such a situation the [NFL] owners would be acting as a classic cartel.").

Defendants' treatment of the Relocation Policies is powerful evidence of their concerted

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[9] Defendants' cited case law is of no help to their position, in that the alleged markets at issue in those actions were wholly without merit. In *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121 (9th Cir. 2018), a group of golf caddies tried to carve up golf advertisement into nonsensical "markets" to suit their particular litigation. In *StubHub, Inc. v. Golden State Warriors, LLC*, No. 15-cv-1436-MMC, 2015 WL 6755594, at *3 (N.D. Cal. Nov. 5, 2015), the plaintiff attempted to argue that there were different markets for the same game tickets based on where they were purchased. And, in *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1063 (9th Cir. 2001), the plaintiff alleged that the women's soccer program at UCLA and UCLA alone was the relevant market.

refusal to deal. It was imperative that the entire NFL – each NFL Club and the NFL as a collection of Clubs – ensure that they complied with those Policies. (Compl. ¶¶ 3-7, 30-35, 78-79, 138-146). Instead, the Policies were openly defied. Even if Oakland had failed to plead Defendants' collective agreement to boycott Oakland, their intent is obvious from this evidence of bad faith: "concerted action may be inferred from circumstantial evidence of the defendant's conduct and course of dealings." *Dimidowich v. Bell & Howell*, 803 F.2d 1473, 1479 (9th Cir. 1986).

Lastly, Defendants contend that the Relocation Fee makes it harder to relocate. Putting aside the legitimacy of such a fee, this is a remarkable contention as the Relocation Fee is paid *to the voting NFL Clubs*, thus obviously encouraging the "yes" votes needed for a move. Defendants simply ignore Oakland's allegations that Defendants are a cartel which now commands supra-competitive prices. (Compl. ¶¶ 23-29, 80-87). Host Cities and fans, not the Raiders, are paying the Relocation Fee.

5. Plaintiff Has Adequately Pled A Price Fixing Scheme

Defendants also err in arguing that Oakland has failed to allege price fixing under Section 1 of the Sherman Act (Count III of the Complaint). Defendants seem to contend that because they did not agree to any specific "Host City" price, they cannot have "fixed prices." (Def. Mem. at 16). Defendants are wrong. As the U.S. Supreme Court has made clear, whether Defendants entered into an agreement to charge "uniform" or "rigid" prices is "immaterial" to a price fixing claim:

> Nor is it important that the prices paid by the combination were not fixed in the sense that they were uniform. . . . An agreement to pay or charge rigid, uniform prices would be an illegal agreement under the Sherman Act. But so would agreements to raise or lower prices whatever machinery for price-fixing was used. . . . In this case, the result was to place a floor under the market—a floor which served the function of increasing the stability and firmness of market prices. That was repeatedly characterized in this case as stabilization. But in terms of market operations stabilization is but one form of manipulation. . . As we have indicated, the machinery employed by a combination for price-fixing is immaterial.

United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 222-223 (1940). *See also U.S. v. Apple*, 791 F.3d 290, 327 (2d Cir. 2015) ("[I]t is well established that *per se* condemnation is not limited to agreements that literally set or restrict prices").[10]

[10] Defendants' cited cases are of no help to their arguments. In *Rick-Mik Enters., Inc. v. Equilon* (footnote continued)

The Complaint alleges an agreement among Defendants to restrict the number of Clubs, and use this restricted market to force Host Cities to bid up the costs of stadia. (Compl. ¶¶ 8, 23-29, 80-87). These allegations demonstrate Defendants' "market manipulation" which "distorts prices" and "prevents the determination of those prices by free competition alone." *Socony*, 310 U.S. at 223.[11]

6. Plaintiff Has Adequately Pled Its Declaratory Judgment Claim

Defendants' only challenge to Oakland's Declaratory Judgment Claim (Count IV) is that it should fail along with Oakland's other antitrust causes of action. Since, as shown above, Plaintiff has adequately pled its antitrust claims, Count IV also should not be dismissed.

C. PLAINTIFF HAS SUFFICIENTLY ALLEGED A CLAIM FOR BREACH OF CONTRACT

Plaintiff has sufficiently alleged facts and circumstances to support the fifth cause of action for breach of contract. "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." Cal. Civ. Code § 1559. Here, Plaintiff has alleged (1) the existence of a valid, binding contract (Compl. ¶ 140); (2) that Plaintiff was an intended and actual third party beneficiary of the contract (Compl. ¶¶ 141-42); and (3) that Defendants breached the contract and that Plaintiff has suffered and will suffer damages as a result of Defendants' breach (Compl. ¶ 146).[12] These allegations and analyses are consistent with those in

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Enters., LLC, 532 F.3d 963, 976 (9th Cir. 2008), plaintiff failed to allege the identity of Defendants' alleged "co-conspirator banks or financial institutions," or "the nature of the conspiracy or agreement." No such deficiencies exist here. In *Universal Grading Serv. v. eBay, Inc.*, No. 09-cv-2755-RMW, 2011 WL 846060, at *7 (N.D. Cal. Mar. 8, 2011), the plaintiff alleged a price fixing scheme between eBay and a coin collecting association. Here, Oakland alleges a scheme among all of the competing NFL teams.

[11] Defendants focus on the Complaint's use of the term monopolistic or economic "rents." (Def. Mem. at 16). Of course, this is an economic term and means any payment to the owner of production that exceeds competitive pricing. (Compl. ¶¶ 100, 102, 111, 113, 122, 124, 133, 135).

[12] Defendants' assertion that the analysis and application of the contract should be under New York law is incorrect, and in any case, moot. (Def. Mem. at 17). There is no conflict between California and New York with respect to third party beneficiary law. *Compare* Cal. Civ. Code § 1559 *with Sidik v. Royal Sovereign Int'l Inc.*, 348 F. Supp. 2d 206, 214 (E.D.N.Y. 2018). Accordingly, this Court can and should apply California law. *See, e.g., Callan v. Merrill Lynch & Co.*, No. 09-cv-0566-BEN, 2010 WL 11508843, at *4, n.1 (S.D. Cal. Jan. 22, 2010) ("[G]iven the absence of any conflict of law between New York and California on the elements for breach of fiduciary duty, the Court assumes for purposes here that California law applies").

St. Louis Reg'l Convention and Sports Complex Auth. v. Nat'l Football League ("*St. Louis*"), No. 1722-CC00976, 2017 WL 6885089 (Mo. Cir. Dec. 27, 2017),where the court was presented with very similar facts and circumstances (the Rams leaving St. Louis for Los Angeles) and *the exact same contractual instruments*. There, on a motion to dismiss, the court held that the Relocation Policies constituted a valid, enforceable contract; the plaintiffs were third party beneficiaries; and the Complaint adequately alleged that defendants breached the contract and plaintiffs suffered damages. *St. Louis*, 2017 WL 6885089, at*1. The same result should occur in this case.[13]

1. Plaintiff Has Sufficiently Alleged That The Relocation Policies Constitute A Valid, Binding Contract

The allegations in Plaintiff's Complaint sufficiently set forth the existence of an enforceable contract. The NFL Constitution and the Relocation Policies are collectively a binding, enforceable contract among Defendants. (Compl. ¶ 140). The Relocation Policies are explicitly established pursuant to the NFL Constitution:

> "The Commissioner shall interpret and from time to time establish policy and procedure in respect to the provisions of the Constitution and Bylaws and any enforcement thereof." (Compl., Ex. 1 p. 32).
>
> "The policy and procedures that apply to any proposed transfer of a club's home territory is promulgated pursuant to Section 4.3 of the NFL Constitution." (Compl., Ex. 2 p. 2).

Under California law, "the rights and duties of the members as between themselves and in their relation to (a private voluntary) association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of (its) constitution and by-laws." *California Dental Ass'n. v. Am. Dental Ass'n.*, 23 Cal. 3d 346, 353 (1979) (quotation omitted). Even the Raiders have conceded "that the NFL's constitution and bylaws govern the NFL and constitute a contract to which all member clubs agreed." *Oakland Raiders v. Nat'l Football League*,

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[13] Although not precedent, the *St. Louis* decision on the motion to dismiss is instructive. There, the Court strictly abided by the standard of review at the pleading stage and ultimately allowed that well-pled complaint to survive. Defendants' argument that the *St. Louis* Court's review was in any way sub-standard is baseless and fails to appreciate the well-established standard of review on a motion to dismiss, no matter the venue. (Def. Mem. at 21, fn. 14).

131 Cal. App. 4th 621, 639 (2005); *see also Raiders I*, 726 F.2d at 1391 ("Our rejection of the NFL's single entity defense implicitly recognized the existence of the first element—the 28 member clubs have entered an agreement in the form of the NFL Constitution and Bylaws.").

Pursuant to California Civil Code Section 1559, a contract for the benefit of a third party may be enforced at any time prior to its rescission. Here, the Relocation Policies were expressly instituted for the benefit of Plaintiff and other Host Cities. (Compl. ¶ 140). In fact, the purpose of these Policies was to entice the massive investments in stadia and other support for a "local" team in exchange for the promise that the team would not simply move because it wanted to. (Compl. ¶ 141). Ironically, The Relocation Policies were promulgated after the Raiders decided to leave Oakland in 1982 for Los Angeles. At that time, the NFL undertook substantial efforts to prevent the Raiders' move and to keep the team in Oakland. Having failed to do so, the NFL crafted the Relocation Policies to prevent the type of "franchise free agency" which led to the Raiders' decision to leave Oakland in the first place (before their return to Oakland in 1995). (Compl. ¶ 142). The NFL has now turned its back both on the purpose of the Relocation Policies and on Oakland. (*Id.*).

Pursuant to the NFL Constitution and the Relocation Policies, Defendants assumed direct obligations to Plaintiff. (Compl. ¶ 143). The express terms of the document contradict Defendants' assertion that the Relocation Policies are mere suggestions and not requirements:

> Article 4.3 also confirms that no club has an "entitlement" to relocate simply because it perceives an opportunity for enhanced club revenues in another location. Indeed, League traditions disfavor relocations if a club has been well-supported and financially successful and is expected to remain so. Relocation pursuant to Article 4.3 may be available, however, if a club's viability in its home territory is threatened by circumstances that cannot be remedied by diligent efforts of the club working, as appropriate, in conjunction with the League Office, or if compelling League interests warrant a franchise relocation.

(*Id.* Ex. 2 p. 2). Defendants were obligated to operate under the Relocation Policies and comply with the processes set forth therein. That was not done here. Here, there were no circumstances that could not be remedied. But Plaintiff could not do it alone; the City needed the Raiders' cooperation and, simply put, they were not interested. They had already decided to relocate. (Compl. ¶¶ 50, 57).

Of course, now that the Relocation Policies are not in direct alignment with the flow of millions of dollars into the owners' pockets, Defendants seek to re-characterize and walk back the

otherwise clear intent of the contract by deliberately omitting the Policies' key mandatory language from their Motion. The Relocation Policies affirmatively state that each NFL Club's "primary obligation" is to "advance the interests of the NFL in its *home territory*." (Compl. ¶ 33; Ex. 2 p. 2 (emphasis added)). Further, the Policies declare that because "League policy favors stable team-community relations, clubs are *obligated to work diligently and in good faith* to obtain and to maintain suitable stadium facilities in their home territories, and to operate in a manner that maximizes fan support in their current home community." (*Id.*). The Relocation Policies also require a notice of a proposed transfer to be published in newspapers, and provided to governmental and business representatives of both the incumbent community and the community to which the team proposes to move, as well as the stadium authority (if any) in the incumbent community (the "interested parties"). (*Id.* at Ex. 2 p. 3). Of course, each of these *requirements* is in addition to the factors stated in the Policies (*Id.* at Ex. 2 p. 4-6) which, as explained in the Complaint (Compl. ¶ 143), Defendants "must" analyze in good faith before any decision or vote. (*Id.* at Ex. 2 p. 3). Each of these factors supported the Raiders' continued presence in Oakland. (Compl. ¶ 143).

Most surprisingly, even Defendants have admitted that the Policies impose obligations on the NFL Clubs, and that the Policies must be satisfied for a relocation petition to be approved. (*Id.* ¶ 154). Apparently that acknowledgement does not apply here as each of these mandatory provisions has been ignored and Defendants have breached their obligations to Oakland. By doing so, each of the 31 NFL Clubs other than the Raiders received their share of the $378 million Relocation Fee, which was negotiated prior to the relocation approval vote. (Compl. ¶¶ 2, 36, 69).

Defendants' argument that because "the Relocation Policy was unilaterally imposed by the NFL Commissioner" and "because it may be revised at any time by the Commissioner, it lacks the required hallmarks of a binding contract" is not persuasive. (Def. Mem. at 18). In fact, California Civil Code section 1559 specifically addresses this point in that a contract that benefits a third party "may be enforced by him at any time before the parties thereto rescind it." A unilateral modification of the Relocations Policies would rescind one version and establish a new, enforceable version.

Notwithstanding that there was an enforceable contract, Plaintiff justifiably and reasonably relied on the Relocation Policies. (Compl. ¶¶ 35, 144). The Policies prohibit Defendants from

shutting a viable Host City out of the negotiating process and ensure that Defendants do not award an NFL club to the highest bidder. (Compl. ¶ 78). The Policies offer the certainty that NFL Clubs stay committed to their home markets and that Host Cities be guaranteed a fair and level playing field in any negotiations regarding stadia and/or relocations. (Compl. ¶¶ 78, 35). Given the history of the Relocation Policies – and the NFL's position regarding the Policies' role in the relocation process – Plaintiff relied on the contract in structuring its relationship with the Raiders. (Compl. ¶ 151, 154). Plaintiff has adequately alleged a valid, binding contract.

2. Plaintiff Has Sufficiently Alleged That The City Of Oakland Was An Intended And Actual Third Party Beneficiary

As alleged in the Complaint, the City of Oakland was an intended and actual third party beneficiary of the NFL Constitution and the Relocation Policies. A third party may sue for breach of contract if it can show that the contract was made with the "express or implied intention of the parties to the contract to benefit the third party." *Barragan v. Nationstar Mortg. LLC*, No. 12-cv-01618, 2012 WL 12895717, at *2 (C.D. Cal. Nov. 7, 2012) (citing *Klamath v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999)). Generally, whether a third party is an intended beneficiary under a contract is a question of fact. *Deerpoint Grp., Inc. v. Agrigenix, LLC*, 345 F. Supp. 3d 1207, 1229 (E.D. Cal. 2018). The issue only becomes a matter of law if it "can be answered by interpreting the contract as a whole and doing so in light of the uncontradicted evidence of the circumstances and negotiations of the parties making the contract. . . ." *Id.* (quoting *Souza v. Westlands Water Dist.*, 135 Cal. App. 4th 879, 891 (2006)). A person need not be the sole or even the primary beneficiary of a contract to be a third party beneficiary. *Serv. Emps. Int'l Union, Local 99 v. Options--A Child Care & Human Servs. Agency*, 200 Cal. App. 4th 869, 875 (2011). Nor does the beneficiary need to be identified by name in a contract in order to be entitled to enforce it; it is sufficient if the third party claimant belongs to a class of persons for whose benefit it was made. *Otay Land Co., LLC v. U.E. Ltd., L.P.*, 15 Cal. App. 5th 806, 855 (2017). An intended beneficiary exists where "the beneficiary would be reasonable in relying on the promise as manifesting an intention to confer a right" on the beneficiary. Restatement (Second) of Contracts, § 302 (1981).

The Relocation Policies repeatedly mention an identifiable set of intended beneficiaries:

"home territory," "home community," "incumbent community" or "stadium authority (if any) in the incumbent community". (Compl. ¶¶ 4, 33, 34; Ex. 2 p. 1-5). This is no coincidence, as "home territory" is defined in Article 4 of the NFL Constitution as "the city in which [any NFL] club is located and for which it holds a franchise and plays its home games, and includes the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of such city. . . ." (Compl., Ex. 1 p. 15). Further, Oakland is specifically mentioned by name in the NFL Constitution in relation to "Home Territory." (*See* Compl., Ex. 1 p. 12).

The California Supreme Court has recently determined that a third party beneficiary claim may proceed where the following elements are satisfied: "(1) [not only] whether the third party would in fact benefit from the contract, but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." *Goonewardene v. ADP, LLC*, 434 P.3d 124, 133 (2019). Each of these elements is satisfied here.

(a) *The Relocation Policies provided a benefit to Plaintiff*

Here, it cannot be disputed that Plaintiff would "benefit from the contract." The Relocation Policies prohibit Defendants from shutting a viable Host City out of the negotiating process and ensuring that Defendants do not award an NFL club to the highest bidder. (Compl. ¶ 78). To the contrary, the Policies expressly offer the certainty that NFL Clubs stay committed to their home markets and that Host Cities be guaranteed a fair and level playing field in any relocation negotiations. (Compl. ¶¶ 78, 35).

In *Goonewardene*, the plaintiffs did not claim they were privy to the contract between the employer and the payroll company. As a result, the Court held that the alleged benefit conferred upon the employees was too vague and conclusory to support their proposition. *See Goonewardene*, 434 P.3d at 136-137 ("When an employer hires a payroll company, providing a benefit to employees with regard to the wages they receive is ordinarily not a motivating purpose of the transaction. Instead, the relevant motivating purpose is to provide a benefit to the employer . . ."). Here, Plaintiff was fully aware of the benefits the Relocation Policies provided, as well as the obligations

that it required (*i.e.*, maintaining facilities). (Compl. ¶ 74).

(b) *Providing a benefit to Host Cities was a "motivating purpose"*

In *Goonewardene*, the court used the term "motivating purpose" in the second element to clarify the term "intent." 434 P.3d at 133. The Relocation Policies were adopted to respond to the following Ninth Circuit guidance in *Raiders I*:

> [t]o withstand antitrust scrutiny, restrictions on team movement should be more closely tailored to serve the needs inherent in producing the NFL 'product' and competing with other forms of entertainment. An express recognition and consideration of those objective factors espoused by the NFL as important, such as population, economic projections, facilities, regional balance, etc., would be well advised. . . Fan loyalty and location continuity could also be considered.

726 F.2d at 1397. Accordingly, the Relocation Policies expressly benefit Host Cities (such as Oakland) that provided economic support and loyal fans, with the focus on "location continuity:"

> Article 4.3 confirms that each club's primary obligation to the League and to all other member clubs is to advance the interests of the League in its home territory. This primary obligation includes, but is not limited to, maximizing fan support, including attendance, in its home territory.

(Compl. ¶ 4; Ex. 2 p. 1 ("League traditions disfavor relocations if a club has been well-supported and financially successful and is expected to remain so;" NFL Clubs are required to "operate in a manner that maximizes fan support in their current home community")). Plaintiff has adequately pled Defendants' motivating purpose in enacting the Relocation Policies; to support "the procompetitive goals of the Relocation Policies." (Compl. ¶¶ 4, 149). Defendants intended to benefit Host Cities by establishing objective standards for relocations and limiting subjective decision-making, thereby protecting the interests and investments of Host Cities, like Plaintiff. (Compl. ¶ 141).

Plaintiff, reflecting its known status as a third party beneficiary, operated and invested based on the representations of Defendants (specifically the Raiders) and the terms of the contract. (Compl. ¶¶ 35, 73, 78, 144). Plaintiff maintained and constantly upgraded the Coliseum (Compl. ¶ 58), and, when it was clear the facility needed replacing, made bona fide proposals for a new stadium complex (Compl. ¶¶ 7, 65, 78). In exchange, Plaintiff reasonably relied on Defendants' compliance with the contract. That did not happen here; Defendants reaped the benefits of the long-

term relationship with Oakland, but when the time came to negotiate in good faith, the opposite occurred. (Compl. ¶ 33 (The Relocation Policies declare that because "League policy favors *stable team-community relations*, clubs are obligated to work diligently and in good faith … and to *operate in a manner that maximizes fan support in their current home community*." (emphasis added)).

As such, Plaintiff has pled a "motivating purpose" to benefit Host Cities.

(c) *Enforcement of the Relocation Policies by a Host City against the NFL and NFL Clubs is consistent with the objectives and reasonable*

The Relocation Policies were created to hold the NFL and the NFL Clubs accountable to each other and to protect established fan bases and Host Cities. Without the threat of enforcement, the Policies are not worth the paper they are printed on. Plaintiff's lawsuit was not filed on the day of the relocation announcement, it was filed after all possible options were exhausted. Enforcement of the Policies is consistent with the expressed objectives and reasonable under the circumstances.

It is not required to show that the contracting parties actually considered the third party enforcement question as a prerequisite to the applicability of the third party beneficiary doctrine:

> Accordingly, the third element does not focus upon whether the parties specifically intended third party enforcement but rather upon whether, taking into account the language of the contract and all of the relevant circumstances under which the contract was entered into, permitting the third party to bring the proposed breach of contract action would be consistent with the objectives of the contract and the reasonable expectations of the contracting parties.

Goonewardene, 434 P.3d at 133 (quotation and citation omitted). "In other words, this element calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties' contracting goals, rather than a determination whether the parties actually anticipated third party enforcement at the time the contract was entered into." *Id.* at 135. Here, as discussed, the benefit conferred and the motivating purpose behind the Policies is clear, especially when dealing with the investment and distribution of hundreds of millions of dollars of public funds. As such, enforcement of the Policies on Defendants is consistent with their objectives and reasonable.

3. Plaintiff Has Sufficiently Alleged That Defendants Breached The Contract And That Plaintiff Has Suffered And Will Suffer Damages As A Result of Defendants' Breach

Plaintiff has sufficiently alleged that Defendants breached the Relocation Policies.

Defendants had contractual obligations, as discussed *infra* in Section III.C.1, but instead, they colluded to facilitate the Raiders' move before and during the time negotiations (in which Oakland participated in good faith) were taking place. (Compl. ¶¶ 50, 51, 58, 62, 72). In contrast, Oakland made significant efforts to satisfy the Relocation Policies' requirements, which should have disallowed the Raiders' move. (Compl. ¶¶ 65, 74). Defendants blatantly ignored the Relocation Policies in order for the 31 NFL Club owners to reap the $378 million Relocation Fee. (Compl. ¶¶ 2, 9, 72). This conduct constitutes a breach of the contract at issue.

Defendants failed to conduct themselves diligently and in good faith. As a result, Defendants intentionally breached their primary obligation to "advance the interests of the NFL in its home territory" and "to obtain and to maintain suitable stadium facilities in their home territories, and to operate in a manner that maximizes fan support in their current home community." (Compl. ¶¶ 33; Ex. 2 p. 2). Despite the financial support and loyalty provided to the Raiders by Plaintiff and the Oakland-based fans, Defendants have breached the terms of the Relocation Policies to Plaintiff's detriment (Compl. ¶¶ 65, 74, 145). As a direct and proximate result of Defendants' breach, Plaintiff has suffered and will suffer significant damages. (Compl. ¶¶ 96, 146).

D. PLAINTIFF HAS SUFFICIENTLY PLED ITS QUANTUM MERUIT AND UNJUST ENRICHMENT CLAIMS

Plaintiff has also sufficiently alleged facts to support claims for Quantum Meruit (Count VI) and Unjust Enrichment (Count VII). "Quantum meruit refers to the well-established principle that 'the law implies a promise to pay for services performed under circumstances disclosing that they were not gratuitously rendered.'" *Huskinson & Brown v. Wolf*, 32 Cal. 4th 453, 458 (2004) (quoting *Long v. Rumsey*, 12 Cal.2d 334, 342 (1938)). This claim is simply the common law equivalent of a contract claim, and is often alternatively pled in addition to breach of contract.

With respect to unjust enrichment: "The Ninth Circuit has instructed district courts to construe claims for unjust enrichment under California law as quasi-contract claims." *In re Vizio, Inc.*, 238 F. Supp. 3d 1204, 1233 (C.D. Cal. 2017) (Staton, J.) (citing *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) and *Brazil v. Dole Packaged Foods, LLC*, 660 Fed. Appx. 531 (9th Cir. 2016) (reversing district court's dismissal of an unjust enrichment claim)); *see also*

Young v. Cree, 2018 WL 1710181, at *8 (N.D. Cal. Apr. 9, 2018) (citing *Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.*, 61 Cal. App. 4th 988 (2015)) (denying motion to dismiss unjust enrichment claims because "the California Supreme Court has clarified that unjust enrichment is a valid cause of action in California"). A claim for unjust enrichment is understood as one for restitution. *McNeary-Calloway v. JP Morgan Chase Bank, N.A.*, 863 F. Supp. 2d 928, 964 (N.D. Cal. 2012). To state a restitution claim, a plaintiff "must plead 'receipt of a benefit and the unjust retention of the benefit at the expense of another.'" *Id*. In addition, plaintiffs' claim for unjust enrichment was also upheld in *St. Louis*. 2017 WL 6885089, at *2 ("The Court finds that Plaintiffs have adequately pleaded a benefit conferred upon Defendants at the expense of Plaintiffs.").

Here, the Complaint alleges that Plaintiff "invested hundreds of millions of dollars to attract, retain and support the Raiders, all spent in reliance on the Relocation Policies and the obligations of Defendants under those Policies." (Compl. ¶ 151). Plaintiff made those investments with the express understanding between Plaintiff and Defendants that (a) Defendants would comply with the Relocation Policies, which includes an obligation to negotiate in good faith and to advance the interests of the league in its home territory; (b) Defendants would support Oakland as the Host City for the Raiders; and (c) Plaintiff would recoup its investments in the Raiders through the revenues generated by the Raiders' continued presence in Oakland. (Compl. ¶¶ 4, 7, 151). Plaintiff reasonably relied on the Relocation Policies to Defendants' benefit. Neither Plaintiff nor Defendants believed that Plaintiff's investment in the Raiders was gratuitous, or that the Relocation Policies somehow did not apply to Plaintiff or the Raiders. (Compl. ¶ 152).

IV. CONCLUSION

Plaintiff's Complaint is well-pled and contains sufficient facts and allegations to establish the basis for the claims on which recovery is sought, including for violations of federal antitrust laws, breach of contract, quantum meruit and unjust enrichment. Defendants' arguments are almost entirely factual, and should only be considered after discovery. As such, Plaintiff has met (and exceeded) the requisite pleading standard and, based on the foregoing, respectfully requests that the Court deny Defendants' Motion to Dismiss in its entirety.

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